

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13330, of Dion A. Pogue et al., pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the side yard requirements (Sub-section 3305.1 and Paragraph 7107.22) and from the prohibition against allowing an addition to a non-conforming structure which now exceeds the allowable percentage of lot occupancy (Paragraph 7107.21) to construct a second story addition to an existing semi-detached dwelling which is a non-conforming structure in an R-5-B District at the premises 1231 Potomac Avenue, S.E., (Square 1022, Lot 4).

HEARING DATE: September 15, 1980
DECISION DATE: November 5, 1980

FINDINGS OF FACT:

1. The subject site is located on the south side of Potomac Avenue between 12th and 13th Streets, S.E., and is known as 1231 Potomac Avenue. It is in an R-5-B District.
2. The site is improved with a two story brick structure which was purchased by the applicants in June, 1979. The property was then condemned.
3. Building permit No. B-274995 was issued on January 25, 1980 to permit the following: "Repair brick and blocks on the back wall, new walls and partitions, floors, decking as necessary. Windows and doors same shape and size, all interior work only".
4. By letter of March 30, 1980, the applicant was advised by the Department of Housing and Community Development that an inspection of the subject premises disclosed that a second story addition was being erected without a building permit. The applicant was directed to submit plans showing the actual construction to date. The applicant was further advised that the aforementioned building permit of January 25, 1980 was for interior work only. By letter of August 28, 1980 the applicant was further advised by the same D.C. Department to stop all further work.

5. On June 20, 1980, the applicant filed the subject application at the office of the Zoning Secretariat for permission from the Board to construct a second story addition. The relief requested requires variances from the side yard requirements and from the prohibition against allowing an addition to a non-conforming structure which now exceeds the allowable percentage of lot occupancy. The applicant testified that the structure had one bedroom and there was a need for further space.

6. The subject structure is the end structure of a series of row houses. It is a semi-detached structure and is non-conforming since it exceeds the lot occupancy permissible for an R-5-B District and does not have an eight foot side yard. The proposed addition will not increase the lot occupancy.

7. The second story addition is approximately ten feet by ten feet. It is unique to the row houses to the immediate left of the subject premises. None of the row houses have second story additions above their rear first floor kitchens.

8. The subject premises and premises 1233 share a common building wall. Each had a chimney stack. In constructing the second story addition, the applicants removed their own chimney and then proceeded to extend the height of the chimney on 1233 beyond the height of the side wall of the new addition. No permission was ever given for the extension of the chimney. The applicant testified that once the wall was constructed, the said chimney was below the D.C. Code.

9. The owner of premises 1233 Potomac Avenue appeared in opposition to the application. The owner stated that she has lived in her premises for twenty-six years. She testified that there has never been such an obstruction to her light and air until the subject addition was constructed. She has windows in the rear of her second floor and the addition, extending ten feet beyond her property, substantially impairs the amount of light and air entering the rear of her home. The neighbor further objected to the application on the grounds that the construction was clouded with misrepresentations and defame on the part of the applicant of the D.C. Code. The neighbor also testified that the subject premises was identical to the other row houses and that all had two bedrooms notwithstanding that in the subject property the partition may have been removed.

10. Advisory Neighborhood Commission - 6B, by letter of October 14, 1980, recommended that the application be denied. In its letter it reported that the addition is already in existence and was built by misrepresentation by the applicant. The ANC was of the opinion that false information was given to the District authorities in order to obtain building permits. Permits were issued for renovation purposes and not for the construction of the rear addition. Stop Orders were issued and ignored. At an ANC meeting, neighbors opposed the application and stressed the loss of light and air upon the above-mentioned adjoining property. The Board concurs in the recommendation of the ANC.

CONCLUSIONS OF LAW:

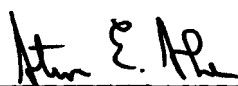
Based on the record, the Board concludes that the applicants are seeking area variances, the granting of which requires a showing of a practical difficulty inherent in the property and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. The Board concludes that there is no exceptional or extraordinary condition of the property which would warrant granting variance relief. The dwelling is of one of a row of substantially similar dwellings. The Board further concludes that the applicants have not demonstrated that they would suffer a practical difficulty if the Zoning Regulations are strictly applied.

Based on Findings No. 8, 9 and 10, the Board further concludes that the application cannot be granted without substantial detriment to the public good. The Board is also not unmindful of the applicant's apparent disregard of the regulations of the District authorities and of the rights of owners of property. For all these reasons, this application is DENIED. It is further DIRECTED that the portion of the structure erected without a valid permit be REMOVED and that the chimney on the property at 1233 Potomac Avenue be restored to its previous condition.

VOTE: 4-0 (Connie Fortune, Charles R. Norris, William F. McIntosh and Douglas J. Patton to DENY; Walter B. Lewis not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 20 FEB 1981

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UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."